

# City Council Memorandum

As Given to Andy K.  
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**TO:** HONORABLE MAYOR AND CITY COUNCIL **DATE:** April 11, 2006  
**FROM:** PUBLIC WORKS DEPARTMENT **ITEM NO:** 38  
**WARD:** 7  
**SUBJECT:** SETTLEMENT, RELEASE AND INDEMNIFICATION AGREEMENT WITH ROHR, INC. TO ADDRESS ENVIRONMENTAL CONDITIONS AT AGRICULTURAL PARK

## ISSUE:

The issue for City Council consideration is approval of the Settlement, Release, and Indemnification Agreement with Rohr Inc. The Agreement would settle past differences and further the City of Riverside's efforts to address environmental conditions on and off the Agricultural Park site. The Agreement is also a means to avoid the expense, uncertainty, and delay of litigation. The Agreement is not an admission of liability by any party.

## RECOMMENDATIONS:

That the City Council:

1. Approve the Settlement, Release, and Indemnification Agreement with Rohr Inc. and authorize the City Manager to execute the Agreement upon receipt and approval by City Attorney's Office of the On-Site and Off-Site Escrow Agreements, and any other documents necessary to comply with the terms of the Agreement.

## BACKGROUND:

The City owns 59.53 acres of real property, known as the Agricultural Park, now within City boundaries on which a sewage treatment plant (Arlanza Treatment Plant) was located and operated by various entities from approximately 1942 to 1965. In July 2003, the City discovered the presence of polychlorinated biphenyls (PCBs) in the abandoned treatment plant facilities, debris and soils on and around the Agricultural Park site. The City has completed its characterization of the area in and around the site for PCBs and intends to remediate the site under the oversight of the California Environmental Protection Agency (Cal EPA) Department of Toxic Control Substances (DTSC).

The City is conducting an ongoing investigation to identify potentially responsible parties for the presence of PCBs on and around the Agricultural Park site. The intent of the investigation is to obtain evidence that would assist the City in holding the potentially responsible parties liable for their share of the PCB remediation costs and other damages. Under the Comprehensive Environmental Responsibility and Reimbursement Liability Act of 1980, as amended CERCLA, and

other applicable federal and state laws, Riverside is entitled to obtain reimbursement and damages for the cost of PCB remediation from potentially responsible parties.

The most notable avenue the City is pursuing is obtainment of records and other evidence from Monsanto Company and its successor entities regarding the sales, marketing, distribution, purchase, use disposal or spread of PCBs in and around the City between 1942 and 1965. On April 12, 2005, the City Council adopted a resolution authorizing the issuance of legislative subpoenas by the City to Monsanto Company to compel the production of records and other evidence relevant to identification of potentially responsible parties. Monsanto Company was the sole manufacturer of PCBs during the relevant period of 1942 to 1965 when the Arlanza Treatment Plant was operational. Documents from Monsanto have been received and are being reviewed by the City Attorney's Office.

During the City's investigation, it became known to the City that Rohr Inc. used PCBs at their site during the time the sewer plant was in operation. Although Rohr has declared that they are not responsible for the PCBs now at the Agricultural Park, Rohr expressed interest in working with the City to restore the Agricultural Park to productive use and address any off-site PCBs issues. This common motivation fostered the development of the Settlement, Release, and Indemnification Agreement.

The parties intend to enter into this Agreement for the purpose of settling potential claims, demands, and causes of action (administrative, judicial, or otherwise) between them with respect to the site and PCB contamination migrating from the site to off-site and avoid the expense, uncertainty, and delay of litigation. The Agreement is further intended to complement the First Amendment to the Exchange, Disposition and Development Agreement (Development Agreement) between the City, Friends of Riverside Airport, (Developer) LLC, Van Buren Golf Center, LLC, and Riverside Gateway Plaza, LLC, also being considered by the City Council.

The key provisions of the Agreement are contained in Table 1.

#### **FISCAL IMPACT:**

The fiscal impact of the Settlement, Release, and Indemnification Agreement to the City of Riverside depends on several variables, notably the ability of the Developer to clean the site to a level acceptable for the issuance of an On-Site No Further Action Letter by DTSC and the extent of off-site remediation required by DTSC, if any, and its associated cost, ultimately culminating in the issuance of an Off-Site No Further Action Letter.

Under the anticipated scenario, the Developer would comply with the terms of the First Amendment to the Exchange, Disposition and Development Agreement (Development Agreement) and clean the site to a level satisfactory to DTSC within three years of the execution of the Development Agreement and this Agreement. If that occurs, Rohr would release \$1.5 million from escrow to the City of Riverside upon issuance of an On-Site No Further Action Letter. This funding would cover the estimated \$1.5 million dollars spent by the City from July 2003 to present on initial cleanup, site characterization, investigation, DTSC oversight and related activities.

In terms of off-site remediation, the belief at this point is that minimal cleanup would be required by DTSC, if any, and the funding of up to \$3.0 million contributed equally by Rohr and the City under the terms of the Agreement would not be expended. The Agreement also provides for a \$150,000 contribution by Rohr toward the purchase of a joint City/Rohr Pollution Legal Liability (PLL) insurance policy for both on and off-site matters or a \$150,000 contribution toward the City's purchase of its own PLL insurance.

There is financial risk associated with entering into the Agreement, markedly the indemnification of Rohr from environmental liabilities related to hazardous materials found on-site and the release of Rohr from claims involving potential environmental liabilities and consequential claims for releases of hazardous materials on-site and migrating from the site to off-site locations. This release would not extend to claims relating to on and off-site toxic tort, personal injury or property damage claims brought by persons other than City or Developer.

The City would offset this exposure by the indemnification tendered by Chemical Waste Management Inc. and Waste Management Inc. as part of the Development Agreement as well as PLL insurance for on-site and on-site/off-site matters offered by the Development Agreement and the Agreement, respectively. Further, if off-site clean up costs are higher than \$3.0 million, the off-site provision of the Agreement would terminate and the City would retain the ability to make any claims regarding future costs for off-site remediation from responsible third parties.

### **ALTERNATIVES:**

Several options are available to the City Council. The City Council may elect to:

1. Deny approval of the Settlement, Release, and Indemnification Agreement;
2. Approve the Settlement, Release, and Indemnification Agreement with modifications; and/or
3. Refer the First Settlement, Release, and Indemnification Agreement to a City Council Subcommittee for review and report back to the City Council.

Prepared by: Siobhan Foster, Public Works Director  
Approved by: Michael J. Beck, Assistant City Manager  
For Bradley J. Hudson, City Manager  
Approved as to form: Gregory P. Priamos, City Attorney

### **Attachments:**

1. Settlement, Release, and Indemnification Agreement with Rohr Inc.
2. Table 1

**Table 1****Settlement, Release, and Indemnification Agreement—Summary of Key Provisions**

Section, Title, Page	Description
Payment to City: On-Site Remediation Section 3.1, pp. 4 - 5	<ul style="list-style-type: none"><li>Within 10 calendar days of Agreement execution, Rohr must place \$1.5 million into On-Site Escrow account</li><li>Upon issuance of On-Site No Further Action Letter from DTSC, Rohr must release funds held in escrow to City</li><li>Should Developer fail to cleanup the site or DTSC fail to issue No Further Action Letter within 3 years of Agreement execution, funds held in escrow would be returned to Rohr &amp; provisions of Agreement pertaining to On-Site terminated</li></ul>
Payment to City: Off-Site Remediation Section 4, pp. 5 - 7	<ul style="list-style-type: none"><li>Rohr would share costs of Off-Site remediation on a 50/50 basis up to a total amount of \$3 million with City &amp; Rohr each contributing up to \$1.5 million</li><li>Within 10 calendar days of regulatory agency approval of Off-Site Remedial Action Plan (RAP), Rohr must place 50% of estimated cleanup costs into Off-Site Escrow account &amp; make payments to City upon presentation of invoices for internal &amp; external costs.</li><li>Internal costs would be limited to \$125,000</li><li>Upon issuance of Off-Site No Further Action Letter from DTSC, any remaining funds held in escrow would be returned to Rohr</li></ul>
Limit to Off-Site Costs Section 4.6, p. 7	<ul style="list-style-type: none"><li>Rohr's obligation to pay ongoing costs of Off-Site remediation &amp; Rohr's contribution to Off-Site escrow would not exceed \$1.5 million</li><li>If cost to complete Off-Site remediation exceeds \$3.0 million, provisions of the Agreement pertaining to the Off-Site would be terminated unless the parties agree in writing to modify the Agreement</li><li>At point of termination, each party would reserve all rights &amp; retain ability to make any claims or pursue any negotiations regarding future costs for further Off-Site remediation</li><li>After expenditure of \$3.0 million, both parties would release each other from any claim for &amp; waive right to recover any of costs already expended for Off-Site remediation before termination of Agreement</li></ul>
Waste Manifests Section 5.3, p.8 & Section 6.3, p. 9	<ul style="list-style-type: none"><li>Rohr would not be listed on any manifests regarding wastes removed from On-Site or Off-Site</li><li>Rohr would not be deemed the "generator" of any materials removed from On-Site or Off-Site</li></ul>

Section, Title, Page	Description
Release of Claims by City On-Site Section 7, pp. 9 - 10	<ul style="list-style-type: none"> <li>o Upon City's receipt of On-Site No Further Action Letter from DTSC &amp; City's receipt of \$1.5 million from On-Site escrow account, City would forever &amp; completely release &amp; discharge Rohr from all claims or any other liability whatsoever including but not limited all environmental liabilities &amp; consequential costs in any way related to release of hazardous materials On-Site whether known or unknown</li> <li>o Release would not extend to category of claims relating to On-Site—toxic tort, personal injury or property damage claims brought by persons other than City or Developer &amp; claims for natural resource damage</li> <li>o Should the provisions of the Agreement concerning On-Site be terminated, City would reserve whatever legal rights &amp; claims it may have against Rohr &amp; other parties</li> </ul>
Release of Claims by City Off-Site Section 8, p. 10	<ul style="list-style-type: none"> <li>o Upon City's receipt of Off-Site No Further Action Letter from DTSC, City would forever &amp; completely release and discharge Rohr from all claims including but not limited to environmental liabilities &amp; consequential costs in any way related to hazardous materials released at &amp; migrating from Site to Off-Site locations identified in the Off-Site RAP whether known or unknown</li> <li>o Release would not extend to category of claims relating to Off-Site—toxic tort, personal injury or property damage claims brought by persons other than City or Developer &amp; claims for natural resource damage</li> <li>o Should the provisions of Agreement concerning Off-Site be terminated, City would reserve whatever legal rights &amp; claims it may have against Rohr &amp; other parties</li> </ul>
Release of Claims by Developer Section 9, pp. 10 - 11	<ul style="list-style-type: none"> <li>o Within 60 days of execution of Agreement, City must cause Developer to execute written release of claims in favor of Rohr</li> <li>o Should City fail to perform this covenant, Rohr may terminate Agreement</li> </ul>
On-Site Indemnification & Financial Assurance Section 10, p. 11	<ul style="list-style-type: none"> <li>o Except for claims not released in Agreement &amp; effective upon the City's receipt of On-Site No Further Action Letter, City would indemnify, defend, &amp; hold harmless Rohr from all liabilities related to hazardous materials found On-Site</li> <li>o City must also require Developer to post performance bond or similar financial assurance to ensure completion of site mediation</li> </ul>

Section, Title, Page	Description
Environmental Insurance Section 11, pp. 11 -12	<ul style="list-style-type: none"> <li>o Parties would make reasonable efforts to obtain Pollution Legal Liability (PLL) insurance for Site &amp; Off-Site with Rohr taking lead</li> <li>o Rohr must investigate 2 options for PLL insurance—single policy naming both City &amp; Rohr as insured and 2 PLL insurance policies that separately provide coverage for Rohr &amp; City</li> <li>o Each party retains right to elect whether to obtain joint or separate coverage</li> <li>o If parties agree to purchase joint PLL insurance policy, Rohr would pay first \$150,000 of one-time premium with 50/50 split of remaining cost of premium</li> <li>o If parties agree not to purchase joint PLL insurance &amp; City elects to purchase own PLL insurance, Rohr must contribute \$150,000 toward cost of City's one-time premium</li> </ul>
No Admission of Liability Section 16	<ul style="list-style-type: none"> <li>o Parties make no admissions of fact or law</li> <li>o Intent of parties that Agreement not establish or be used by either party or any third parties as precedent or admission of liability</li> </ul>

## **SETTLEMENT, RELEASE, AND INDEMNIFICATION AGREEMENT**

This Settlement, Release, and Indemnification Agreement ("Agreement") is entered into on this 16th day of February, 2006, by and among Rohr, Inc., a Delaware Corporation ("Rohr"), and the City of Riverside, California (the "City"). The City and Rohr are referred to as "the Parties." The Parties make this Agreement to settle past differences and further the City's efforts to address environmental conditions at Ag Park so it can be redeveloped for housing.

### **RECITALS**

A. This Agreement concerns the real property identified as Assessor Parcel Numbers 155 040 004 and 155 040 005, County of Riverside, California (the "Site"), near Crest and Rutland Avenues. The City owns the Site, which is referred to as Ag Park.

B. From approximately 1942 to 1965, a sewage treatment plant operated at the Site. The Parties understand that the Site became contaminated with Hazardous Materials, primarily PCBs, as a result of the sewage treatment plant operations. Extensive environmental investigations have been conducted at the Site. They identify areas of PCB soil contamination at varying locations and depths. Based on testing to date, the Off-Site PCB contamination is minimal and at levels below state standards.

C. The City would like to clean up the contamination at the Site and facilitate its redevelopment for housing. Restoring Ag Park for residential use will benefit all members of the community. The City and Rohr have a common objective of working together to facilitate the restoration of Ag Park so it can be put to productive use. This Agreement is intended to advance that objective, without an admission of liability by any Party.

D. The City wants to redevelop the Site for residential use through its contracts with a real estate developer ("Designated Developer"). The Parties understand that the Designated Developer intends to build single family detached homes on the Site after Remediation is completed. The City has entered or will be entering into contracts with the Designated Developer regarding such future development.

E. The City is in negotiations with the California Department of Toxic Substances Control ("DTSC") to enter into a voluntary cleanup agreement to enable residential redevelopment of the Site. The City has advised Rohr that it will supervise and arrange for the Designated Developer to perform the On-Site Remediation, as approved by DTSC under the City's voluntary cleanup agreement.

F. The Parties enter into this Agreement for the purpose of settling certain claims, demands, and causes of action (administrative, judicial, or otherwise) between them with respect to the Site and PCB contamination migrating from the Site to Off-Site, and seek to avoid the expense, uncertainty and delay of litigation.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

### Section 1. Definitions

1.1 "**City**" means the City of Riverside, its authorized representatives and officials, its assigns, employees, agents, and any and all other persons or entities who are acting or who have acted at any time on behalf of the City.

1.2 "**Claims**" shall have the meaning set forth in Section 7.2.

1.3 "**Consequential Costs**" means costs incurred by the Parties because of a failure by Designated Developer to undertake or to complete environmental investigative or remedial work, including Remediation, agreed upon by the City with governmental agencies with jurisdiction over the Site.

1.4 "**Designated Developer**" means the real estate developer who will acquire the Site under an agreement with the City for the purpose of building single family residential housing on the Site, and that real estate developer's parent and affiliated companies, joint venturers, partners, predecessors, successors, assigns, shareholders, members, officers, directors, employees, agents, and any and all other persons or entities who are acting or who have acted at any time on behalf of the real estate developer. The Parties understand that, at this time, the Designated Developer is Friends of the Riverside Airport, LLC.

1.5 "**Environmental Liabilities**" means all past, present and future claims, of whatever kind or nature, contingent or otherwise, foreseeable or unforeseeable, suits, causes of action, demands, losses, damages (including, without limitation, foreseeable and unforeseeable consequential damages, punitive damages and natural resource damages), diminution of property value, liabilities, fines, penalties, costs, taxes, charges, judicial proceedings, orders, judgments, settlements, administrative proceedings, remedial actions and compliance requirements (including, without limitation, notices of noncompliance, charges, directives, demands, requests for information and consent agreements), enforcement and cleanup actions, third-party claims (including, without limitation, tort, personal injury, economic and property claims, and Proposition 65 suits), expenses (including, without limitation, added costs of redevelopment, defense costs, and reasonable fees and expenses of attorneys, experts and consultants), arising directly or indirectly, in whole or in part, out of, or in any way related to, the Release of any Hazardous Materials at, on, in, under or from the Site before the date of this Agreement.

1.6 "**Environmental Laws**" means all applicable present and future laws that relate to the protection of human health, safety, wildlife or the environment, including, but not limited to, all: (a) federal, state and local laws, regulations, rules and other written requirements; (b) licenses, permits, orders, approvals, plans and similar items of all federal, state and local governmental authorities; and (c) applicable judicial and administrative decrees, judgments, orders and directives.



- 1.7 **"External Costs"** shall have the meaning set forth in Section 4.2.
- 1.8 **"Hazardous Materials"** means any substance, material or waste:
- (i) the presence of which requires investigation, monitoring or remediation under any Environmental Laws or any federal, state or local policy or guideline; or
  - (ii) which is or becomes listed, regulated or defined as a hazardous or toxic waste, pollutant, contaminant, material or substance under any Environmental Laws, and shall include, without limitation, PCBs, gasoline, diesel fuel or other petroleum products and their additives.
- 1.9 **"Internal Costs"** shall have the meaning set forth in Section 4.2.
- 1.10 **"On-Site"** means within the property boundaries of the Site.
- 1.11 **"On-Site Escrow"** means the escrow account established under Section 3 of this Agreement.
- 1.12 **"On-Site No Further Action Letter"** means a letter from DTSC (or a government agency that is the successor to DTSC regarding cleanup of Ag Park) stating that Remediation at the Site has been fully completed so that it is suitable for residential use and single family detached homes, without deed restrictions or engineering controls.
- 1.13 **"Off-Site"** means real property (and associated soil, groundwater, and surface water) outside of the property boundaries of the Site that are identified in the Off-Site RAP as containing Hazardous Materials Released at and migrating from the Site.
- 1.14 **"Off-Site Escrow"** means the escrow account established under Section 4 of this Agreement.
- 1.15 **"Off-Site No Further Action Letter"** means a letter from DTSC or any other federal or state agency with jurisdiction over the Off-Site cleanup stating that Remediation in the Off-Site has been completed to a standard acceptable for its current land use.
- 1.16 **"Off-Site RAP"** means a remedial action plan, which shall include an estimate of the costs to complete Off-Site Remediation, prepared by the City or its consultants, and approved by a federal or state agency with jurisdiction over the Off-Site, completion of which shall result in the issuance of an Off-Site No Further Action Letter.
- 1.17 **"Off-Site Remediation Costs"** shall have the meaning set forth in Section 4.2.
- 1.18 **"PCBs"** means polychlorinated biphenyls of any variety or concentration, unless otherwise specified.

1.19 **"PLL Insurance"** shall mean environmental pollution legal liability insurance providing, at a minimum, for a term of not less than ten years, ten million U.S. dollars (\$10,000,000) coverage for: (i) on-site and off-site required cleanup of pre-existing conditions following issuance of a "no further action" letter; and (ii) third party claims for on-site and off-site bodily injury and property damage resulting from pre-existing conditions.

1.20 **"Release"** or **"Released"** has the meaning set forth in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

1.21 **"Remediation"** means any and all environmental investigation, sampling, data collection, preparation of technical reports, removal, disposal of contaminated media, remediation, restoration, treatment, operations and maintenance, and monitoring.

1.22 **"Rohr"** means Rohr, Inc. and its predecessor Rohr Aircraft Corporation (also known as Rohr Industries, Inc.).

1.23 **"Rohr's 50% Contribution to Off-Site Escrow"** shall have the meaning set forth in Section 4.3.

1.24 **"Rohr Released Parties"** means Rohr and its parent, Goodrich Corporation, and their affiliated companies, predecessors, successors, assigns, shareholders, officers, directors, employees, and agents, and any and all other persons or entities who are acting or who have acted at any time on behalf of Rohr.

1.25 **"Site"** means the Ag Park site which consists of Assessor Parcel Numbers 155 040 004 and 155 040 005, near Crest and Rutland Avenues, County of Riverside, California. A legal description is attached as Exhibit A showing the boundaries of the Site.

## **Section 2. Recitals Incorporated into Agreement**

2.1 The Parties incorporate into this Agreement the recitals set forth above as part of the terms of the Settlement Agreement. The recitals are "recitals" within the meaning of Evidence Code § 622.

## **Section 3. Payment to City: On-Site Remediation**

3.1 Within ten calendar days of execution of this Agreement, Rohr shall place into the On-Site Escrow the amount of one million five hundred thousand U.S. dollars (\$1,500,000), which will then be handled as set forth below:

3.1.1 The City shall promptly notify Rohr and the escrow agent for the On-Site Escrow in writing of the date it receives the On-Site No Further Action Letter and provide a copy to both.

3.1.2 Following the completion of the On-Site Remediation required under agreements and/or orders between the City and DTSC, within thirty (30) calendar days after the receipt by the City

of a final On-Site No Further Action Letter in a form reasonably acceptable to Rohr, Rohr shall instruct the escrow agent to release the funds held in the On-Site Escrow to the City.

3.1.3 Should the Designated Developer not complete Remediation of the Site or withdraw from the project, or should DTSC or similar agency fail to provide an On-Site No Further Action Letter to the City within three years of the date of execution of this Agreement, then the money in the On-Site Escrow shall be returned to Rohr and the provisions of this Agreement pertaining to the On-Site shall promptly be terminated as provided in Section 25.

3.1.4 The Parties agree to execute an On-Site Escrow agreement in the form set forth in Exhibit B. The On-Site Escrow agreement shall include a provision that authorizes the escrow agent to disburse to Rohr the escrowed funds automatically at the end of the three-year period, without the need for either Party to consent to or authorize such release. The City and Rohr may agree to extensions of this three year time period, but such extensions shall be in writing signed by both Parties, and the On-Site Escrow agreement shall be amended in writing accordingly.

3.1.5 The On-Site Escrow funds shall be maintained in an interest-bearing account or accounts, with all interest accruing to the party receiving the one million five hundred thousand U.S. dollars (\$1,500,000) upon payout in accordance with this Agreement.

#### **Section 4. Payment to City: Off-Site Remediation**

4.1 The City and Rohr shall share the costs of the Off-Site Remediation on a 50/50 basis, up to the total amount of three million U.S. dollars (\$3,000,000), with the City and Rohr each contributing up to one and a half million U.S. dollars (\$1,500,000).

4.2 The City shall tender to Rohr invoices for Off-Site Remediation work it conducts in accordance with Section 6 of this Agreement. Such invoices may include government oversight costs and the costs of technical consultants, engineers, and contractors for Off-Site Remediation ("**External Costs**"). Such invoices may also include the City's internal costs for staff, attorneys and outside counsel for work documented to be performed solely for Off-Site Remediation ("**Internal Costs**"). The External and Internal Costs shall be collectively referred to as "**Off-Site Remediation Costs**". Rohr shall reimburse the City for 50% of Off-Site Remediation Costs within 90 days of receipt of invoices properly documenting such expenditures, unless Rohr disputes the costs using the procedures set forth in Section 12. Rohr's obligation to reimburse Internal Costs shall be limited to one hundred and twenty-five thousand U.S. dollars (\$125,000).

4.3 Within ten calendar days of government agency approval of the Off-Site RAP, Rohr shall place into the Off-Site Escrow 50% of the estimated costs of Off-Site Remediation, as identified in the Off-Site RAP ("*Rohr's 50% Contribution to Off-Site Escrow*").

4.4 The Parties agree to execute an Off-Site Escrow agreement in the form set forth in Exhibit C. The Off-Site Escrow agreement shall authorize the escrow agent to make payments to the City, upon presentation of invoices for Internal and External Costs, unless Rohr objects in writing to disbursement of such costs as provided in Section 4.5.

4.4.1 The Off-Site Escrow agreement shall include a provision that authorizes the escrow agent to disburse any remaining escrowed funds automatically to Rohr within sixty (60) days after the City receives an Off-Site No Further Action Letter in a form reasonably acceptable to Rohr, without the need for either Party to consent to or authorize such release.

4.4.2 The Off-Site Escrow funds shall be placed into an interest-bearing account or accounts, with all interest available to be spent on Off-Site Remediation up to the receipt of an Off-Site No Further Action Letter. Any remaining interest and funds after receipt of an Off-Site Further Action Letter shall thereafter promptly be disbursed by the escrow agent back to Rohr.

4.4.3 The City and Rohr may agree to modifications of the Off-Site Escrow, but such modifications shall be in writing signed by both Parties, and the Off-Site Escrow agreement shall be amended in writing accordingly.

4.5 The City shall direct the Off-Site Remediation so that the Off-Site Remediation Costs are commercially reasonable, necessary and consistent with costs incurred for similar types of Remediation projects.

4.5.1 Rohr shall have the right to review the City's accounting and its books and records and to be informed in detail by the City or its agents of what actions were performed and costs incurred in Off-Site Remediation.

4.5.2 If Rohr disputes the reasonableness or necessity of any Off-Site Remediation Costs, it shall notify the City and the escrow agent for the Off-Site Escrow in writing, stating the basis for its dispute. The escrow agent for the Off-Site Escrow shall not disburse funds for any such disputed costs to the City for a period of sixty (60) days.

4.5.3 Within twenty (20) days of receiving a written statement disputing any Off-Site Remediation Costs, senior management of the City and Rohr shall meet to discuss and attempt to resolve such

dispute on an informal basis. If they successfully resolve the dispute within the 60 day period, they shall provide appropriate instructions to the Off-Site Escrow agent.

4.5.4 In the event that senior management of the City and Rohr are *not* able to resolve a dispute informally within the 60 day period, the escrow agent shall disburse the requested amount to the City, but Rohr may request binding arbitration of the dispute under Section 12.

4.6 Rohr's obligation to pay ongoing costs of Off-Site Remediation under Section 4.2 and Rohr's 50% Contribution to Off-Site Escrow under Section 4.3 shall not exceed a total of one and a half million U.S. dollars (\$1,500,000).

4.6.1 If the cost to complete the Off-Site Remediation and obtain an Off-Site No Further Action Letter exceeds a total of three million dollars (\$3,000,000), then the provisions of this Agreement pertaining to the Off-Site shall be promptly terminated, unless the Parties agree in writing to modify the Agreement. At that point, each party shall reserve all rights and retain the ability to make any claims or pursue any negotiations regarding future costs for further Off-Site Remediation with each other and with third Parties, as provided in Section 25.4. Both Parties shall, however, after the expenditure of a total of three million dollars (\$3,000,000) release each other from any claim for and waive the right to recover any of the costs already expended and incurred for the Off-Site Remediation before termination of this Agreement as provided for in this Section 4.6.1.

## **Section 5. Performance of On-Site Remediation**

5.1 The City shall arrange for, manage, supervise, and direct all On-Site Remediation of Hazardous Materials, whether performed by the Designated Developer, the City, or consultants and contractors acting at their direction, and shall use commercially reasonable efforts to obtain an On-Site No Further Action Letter.

5.2 The City shall use commercially reasonable efforts to ensure that Designated Developer undertakes and completes all steps to fully perform On-Site Remediation necessary in order to obtain the On-Site No Further Action Letter.

5.2.1 All On-Site Remediation shall be conducted: (i) in a diligent fashion by experienced and qualified contractors acting under the supervision of experienced and qualified environmental consultants and engineers, (ii) pursuant to written workplans which shall be approved by DTSC or the government agency supervising the work, (iii) in accordance with applicable laws, and (iv) following the receipt of required permits, licenses and approvals.

5.3 Rohr's name shall not be used on any manifests or similar documents regarding wastes or debris removed from the On-Site for disposal or treatment and Rohr shall not be deemed to be the generator of any materials removed from the On-Site.

5.4 The City shall promptly provide Rohr with any final reports regarding completion of On-Site Remediation as well as the On-Site No Further Action Letter.

5.5 The City shall be responsible for managing the Site, allowing access, communicating with the federal and state agencies, paying oversight costs, performing well closures, and proper cleanup and closure of any portions of the Site.

#### **Section 6. Performance of Off-Site Remediation**

6.1 The Parties understand that some limited sampling has been performed by the City and its consultants Off-Site and that the results to date do not exceed State standards or require Remediation. The City has submitted a report to DTSC of sampling conducted in the Off-Site and awaits a determination from DTSC on whether any Off-Site Remediation will be required.

6.2 The City shall arrange for, manage, supervise, direct and perform Off-Site Remediation of Hazardous Materials Released at and migrating from the Site, if any is required by DTSC or other government agency with jurisdiction.

6.2.1 The City shall ensure that any Off-Site Remediation of Hazardous Materials is conducted at the City's direction and in accordance with the City's instructions.

6.2.2 All Off-Site Remediation shall be conducted: (i) in a diligent fashion by experienced and qualified contractors acting under the supervision of experienced and qualified environmental consultants and engineers, (ii) pursuant to written workplans which shall be provided to Rohr and approved by DTSC or the government agency supervising the work, (iii) in accordance with applicable laws, and (iv) following the receipt of required permits, licenses and approvals.

6.3 Rohr's name shall not be used on any manifests or similar documents regarding wastes or debris removed from the Off-Site for disposal or treatment and Rohr shall not be deemed to be the generator of any materials removed from the Off-Site.

6.4 The City shall promptly provide Rohr with written copies of all correspondence, orders, technical reports, data, evaluations and communications to or from government authorities in any way related to Remediation of Hazardous Materials Released at and migrating from the Site to Off-Site, including any information showing progress towards, non-compliance with, or completion of Off-Site Remediation. The City shall also keep Rohr fully informed of the status of activities Off-Site.

6.5 The City shall be responsible for managing Off-Site Remediation, allowing access, communicating with the federal and state agencies, paying oversight costs, performing well closures, and proper cleanup and closure of any portions of the Off-Site.

6.6 The City shall promptly provide a copy of the Off-Site No Further Action Letter to Rohr and the Off-Site Escrow agent after the City receives it.

#### **Section 7. Release of Claims by City: On-Site**

7.1 The release of On-Site Claims set forth in this Section 7 shall become fully and irrevocably effective at the time the City receives an On-Site No Further Action Letter. Should the provisions of this Agreement concerning the On-Site be terminated as set forth in Sections 3.1.3 and 25.2, this release shall *not* take effect and the City shall reserve whatever legal rights and Claims it may have against Rohr and other Parties.

7.2 Effective upon the City's receipt of an On-Site No Further Action Letter and the City's receipt of the On-Site Escrow funds, the City shall forever and completely release and discharge the Rohr Released Parties from all claims, liens, liabilities, losses, damages, causes of action, claims for relief, claims for costs, or any other liability whatsoever ("Claims"), including, but not limited to, all Environmental Liabilities and Consequential Costs in any way related to Releases of Hazardous Materials On-Site, whether known or unknown, *provided however* that this release shall *not* extend to the following limited category of Claims relating to the On-Site: (i) toxic tort, personal injury or property damage Claims brought by persons other than the City or Designated Developer and their parent and affiliated companies, joint venturers, partners, predecessors, successors, assigns, shareholders, members, officers, directors, agents, employees, contractors, engineers, and consultants; and (ii) Claims for natural resource damages.

7.3 The City understands the meaning and effect of California Civil Code Section 1542 which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The City assumes the risk of any and all unknown, unanticipated or misunderstood defenses, claims, causes of action, contracts, liabilities, indebtedness and obligations which are released by this Agreement and hereby waives and releases all rights and benefits which it might otherwise have under California Civil Code Section 1542.

#### **Section 8. Release of Claims by City: Off-Site**

8.1 The release of Off-Site Claims set forth in this Section 8 shall become fully and irrevocably effective at the time the City receives an Off-Site No Further Action Letter. Should the provisions of this Agreement concerning the Off-Site be terminated as set forth in Sections 4 and 25, this release of Off-Site Claims shall *not* take effect. In that event, the Parties shall

reserve whatever legal rights and Claims they may have against each other and against third Parties, except as provided in Section 4.6.

8.2 Effective upon receipt of an Off-Site No Further Action Letter, the City shall forever and completely release and discharge the Rohr Released Parties from all Claims including, but not limited to, all Environmental Liabilities and Consequential Costs in any way related to Hazardous Materials Released at and migrating from the Site to the Off-Site locations identified in the Off-Site RAP, whether known or unknown, *provided however* that this release shall *not* extend to the following limited category of Claims relating to the Off-Site: (i) toxic tort, personal injury or property damage Claims brought by persons other than the City or Designated Developer and their parent and affiliated companies, joint venturers, partners, predecessors, successors, assigns, shareholders, members, officers, directors, agents, employees, contractors, engineers, and consultants; and (ii) Claims for natural resource damages.

8.3 The City understands the meaning and effect of California Civil Code Section 1542 which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The City assumes the risk of any and all unknown, unanticipated or misunderstood defenses, claims, causes of action, contracts, liabilities, indebtedness and obligations which are released by this Agreement and hereby waives and releases all rights and benefits which it might otherwise have under California Civil Code Section 1542.

#### **Section 9. Release of Claims by Designated Developer**

9.1 Within sixty (60) days of execution of this Agreement, the City shall cause the Designated Developer to execute a written release of Claims in favor of the Rohr Released Parties [and the City] in the form substantially similar to Exhibit D and reasonably acceptable to Rohr. Should the City fail to perform this covenant, Rohr may terminate this Agreement, with any escrowed funds released to Rohr, together with any interest accruing on such funds. The Parties may agree to an extension of this sixty (60) day period, but only if such agreement is made in writing and signed by both Parties.

#### **Section 10. On-Site Indemnification and Financial Assurance**

10.1 Except for Claims not released in Section 7.2, effective upon the City's receipt of an On-Site No Further Action Letter, the City shall indemnify, defend, and hold harmless the Rohr Released Parties from any and all Environmental Liabilities in any way related to Hazardous Materials found On-Site. For the avoidance of doubt, this indemnity shall not extend to any Claims related to Hazardous Materials in the Off-Site.

10.2 The City shall promptly assume its defense and indemnification obligations (with counsel reasonably acceptable to Rohr) upon written notice from Rohr. At the City's request,



Rohr shall reasonably cooperate in the defense of a claim at Rohr's own expense. The City shall not settle any claim without Rohr's written agreement, which agreement shall not be unreasonably withheld.

10.3 In its contracts with the Designated Developer, the City shall require that the Designated Developer post a performance bond or similar financial assurance to ensure completion of the Designated Developer's responsibilities for Remediation at the Site, in a form reasonably acceptable to Rohr.

#### **Section 11. Environmental Insurance**

11.1 The Parties shall use commercially reasonable efforts to obtain PLL Insurance for the Site and the Off-Site. Rohr shall take the lead in investigating the availability, terms and pricing of PLL Insurance. The City shall cooperate by making available documents, reports and other information requested by PLL Insurance carriers in order to obtain quotes on premiums for PLL Insurance. The City shall not independently contact a broker to investigate PLL Insurance, but shall coordinate with Rohr and the broker selected by Rohr.

11.2 The Parties agree that Rohr may investigate, at a minimum, two options for PLL Insurance: (1) a single PLL Insurance policy that names both the City and Rohr as insured Parties, and (2) two PLL Insurance policies that separately provide coverage for Rohr and for the City. Each Party retains the right, in its sole discretion, to elect whether to obtain joint or separate coverage.

11.3 Each Party also retains the right, in its sole discretion, to determine whether any available PLL Insurance is reasonably priced and whether it wants to purchase such coverage.

11.4 If the Parties agree that they wish to purchase a specific joint PLL Insurance policy, Rohr shall pay the first \$150,000 of the cost of the one-time premium, with each Party sharing equally (50/50) the remaining cost of the premium. After purchasing joint PLL Insurance, neither Party may cancel such insurance, nor may a Party request a change in the PLL Insurance without the written consent of the other Party.

11.5 In the event that the Parties do not agree to purchase Joint PLL Insurance, but the City elects to purchase its own separate PLL Insurance, Rohr shall contribute \$150,000 towards the cost of the City's one-time insurance premium.

11.6 In electing to purchase joint or separate PLL Insurance, neither Party represents or warrants to the other Party that such insurance is adequate to fully protect that Party's interests. In selecting PLL Insurance, each Party acknowledges that it will be represented by competent counsel who will provide expert advice to it on the risks, benefits and limitations of PLL Insurance, and that it is not relying on the other Party in exercising its rights under this Section 11.

## **Section 12. Dispute Resolution**

12.1 The Parties shall resolve any disputes that arise under this Agreement, including disputes concerning Off-Site Remediation Costs, in accordance with this Section 12.

12.1.1 In the first instance, any disputes shall be referred to senior management of the City and Rohr for informal resolution. If senior management is unable to resolve any dispute informally within twenty (20) days of receiving written notice, the Parties shall resolve the matter through binding arbitration.

12.1.2 An arbitration hearing shall be held before a single arbitrator to be mutually agreed upon by the City and Rohr. If the Parties cannot agree on an arbitrator, the arbitration shall be held before three arbitrators to be selected by an environmental mediation service agreed to by the Parties, or in the absence of agreement, to be selected from a panel of arbitrators in accordance with the procedures set forth in the American Arbitration Association ("AAA") commercial Arbitration Rules.

12.1.3 All relevant, nonprivileged documents, excluding summaries of expert testimony, will be exchanged before arbitration under procedures set by the arbitrator.

12.1.4 Summaries of expert testimony and all documents to be submitted as exhibits will be exchanged before arbitration under procedures set by the arbitrator.

12.1.5 Depositions will be permitted of all witnesses to be called at the arbitration hearing. Such witnesses will be designated before arbitration under procedures set by the arbitrator, except witnesses to be used only for rebuttal purpose.

12.1.6 The arbitration shall not exceed three days.

12.1.7 The arbitration decision, to be rendered not later than 30 days after the final day of the hearing, shall be judicially enforceable, non-appealable and binding, except to the extent set forth in the California Code of Civil Procedure 1286.2 and 1286.6.

## **Section 13. Representation and Warranty of Authority**

13.1 The City represents and warrants that it has taken all acts necessary, and has the authority, to enter into this Agreement and to perform all promises made in this Agreement.

#### **Section 14. Cooperation**

14.1 The Parties shall cooperate to minimize expenses and Environmental Liabilities, in a manner consistent with applicable laws and protective of public health and the environment. The Parties shall use best efforts not to prejudice one another's interests.

#### **Section 15. Advice of Counsel**

15.1 The Parties hereby promise that each Party: (i) has read this Agreement; (ii) has had the provisions, and consequences thereof, fully explained by such Party's legal counsel; and (iii) is freely and voluntarily signing this Agreement upon advice furnished by such Party's expert legal counsel and advisors.

#### **Section 16. No Admission of Liability**

16.1 The Parties entering into this Agreement make no admissions of fact or law. It is the intent of the Parties that this Agreement shall not establish or be used by either Party or any third parties as a precedent or an admission of liability.

#### **Section 17. Integration Clause**

17.1 This Agreement contains the entire agreement between the Parties relating to the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, are merged herein.

#### **Section 18. Neutral Interpretation**

18.1 The provisions contained in this Agreement shall not be construed in favor or against any Party because that Party or its counsel drafted part of this Agreement, but shall be construed as if all Parties prepared this Agreement, and any rules of construction to the contrary, including, without limitation, California Civil Code Section 1654, are specifically waived. The terms of this Agreement were negotiated at arm's length by the Parties.

#### **Section 19. Severability**

19.1 If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid, in whole or in part for any reason, then such provision or part thereof shall be stricken from this Agreement and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement.

#### **Section 20. Counterparts**

20.1 This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall constitute one and the same Agreement. Facsimile signatures shall have the same force and effect as original signatures.

## **Section 21. Authority**

21.1 The Parties warrant and represent that each of the persons executing this Agreement on behalf of a legal entity (i) has been authorized to do so by the entity on whose behalf it is being signed, and (ii) has the authority to bind the signatory Party for which he or she is signing to the performance of its obligations under this Agreement.

## **Section 22. Non-Assignment and Warranty**

22.1 The Parties represent and warrant that they are the sole owners of all rights and interest in the claims and other matters which they release, and that they have not assigned or transferred or purported to assign or transfer any claims, demands, actions, causes of action, damages or losses disposed of by this Agreement.

## **Section 23. Successors in Interest**

23.1 The terms, conditions, and provisions of this Agreement are binding upon and shall inure to the benefit of all assigns and successors in interest.

## **Section 24. California Law/Venue**

24.1 This Agreement shall be construed in accordance with and be governed by the laws of the State of California.

## **Section 25. Modification and Termination**

25.1 This Agreement may be modified only by a writing signed by the Parties.

25.2 With respect to On-Site Remediation, if and only if the City is unable to perform the On-Site Remediation within three years due to reasons beyond its control, then either Party may terminate the provisions of this Agreement pertaining to the On-Site without the consent of the other, by providing written notice to the other Party. If the City fails to perform the On-Site Remediation for any other reason, Rohr shall be entitled to specific performance. Notice of termination shall be made in writing addressed to the person signing below on behalf of the other Party and shall be effective five days after it is received. A copy of the notice of termination shall also be sent simultaneously to the escrow agent for the On-Site Escrow and any funds held in the On-Site Escrow shall be promptly returned to Rohr.

25.3 With respect to Off-Site Remediation, if the City is unable to perform the Off-Site Remediation and obtain an Off-Site Remediation No Further Action Letter for a total cost of less than three million dollars (\$3,000,000), then the provisions of this Agreement pertaining to the Off-Site shall be promptly and automatically terminated, as set forth in Section 4.6.

25.4 After termination of any provision of this Agreement under Sections 25.2 or 25.3, the Parties shall return to their respective positions and retain their respective arguments, claims,

or defenses, except as provided in Section 4.6.1. In such event, the Parties agree to negotiate in good faith towards a mutually agreeable solution.

25.5 The failure of a Party to exercise any right or remedy provided by this Agreement or by law shall not be a waiver of any obligation or right of the Parties, nor shall it constitute a modification of this Agreement.

#### Section 26. Notice

26.1 Any notice required, permitted or given under this Agreement shall be in writing:

To City: City Manager  
City of Riverside  
3900 Main Street  
Riverside, California 92522

To Rohr: Plant Manager  
Rohr, Inc.  
8200 Arlington Avenue  
Riverside, California 92503-1499

With a copy to:  
Office of the General Counsel  
Goodrich Corporation  
Four Coliseum Centre  
2730 West Tyvola Road  
Charlotte, North Carolina 28217-4578

All notices shall be provided by U.S. mail and by one of the following methods: (1) facsimile, (2) overnight courier, or (3) e-mail. Notices shall be deemed delivered upon actual receipt.

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the day and year indicated below, as authorized by Ordinance No. \_\_\_\_\_ of the City Council.

Dated: \_\_\_\_\_

The City of Riverside

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: Feb 21, 2006

Rohr, Inc.

By: [Signature]

Print Name: Gregory B. Peters

Title: VP AND GM - OPERATIONS

APPROVED AS TO FORM

[Signature]  
SUPERVISING DEPUTY CITY ATTORNEY  
216542621

-15-

38-21

EXHIBIT A  
Property Description

21654262 1

-16-

**38-22**

Description of Property:

A real property in the City of Riverside, County of Riverside, State of California, described as follows:

TENTATIVE TRACT NO. 28987, BEING A SUBDIVISION OF A PORTION OF THE FOLLOWING:

THAT PORTION OF THE BIXMILL TRACT, AS SHOWN BY MAP ON FILE IN BOOK 16, PAGES 28, 29 AND 30 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA AND ALL THAT PORTION OF THE RANDOLPH SUBDIVISION AS SHOWN BY MAP ON FILE IN BOOK 16, PAGE 39 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBES AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 2, RANDOLPH SUBDIVISION; THENCE NORTH 0° 23' EAST, 330.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 1, BLOCK 2, RANDOLPH SUBDIVISION;  
THENCE NORTH 89° 39' WEST ALONG THE NORTH LINE OF THE RANDOLPH SUBDIVISION, A DISTANCE OF 659.80 FEET TO THE NORTHEAST CORNER OF BLOCK 3, BIXMILL TRACT;  
THENCE NORTH 89° 30' 30" WEST ALONG THE NORTH LINE OF THE BIXMILL TRACT, A DISTANCE OF 1090.20 FEET;  
THENCE SOUTH 0° 23' WEST, 1600.00 FEET;  
THENCE SOUTH 89° 30' 30" EAST, 1100.00 FEET;  
THENCE SOUTH 0° 23' WEST, 300.00 FEET;  
THENCE SOUTH 89° 39' 40" EAST, 500.00 FEET;  
THENCE NORTH 0° 23' WEST, 1570.00 FEET;  
THENCE SOUTH 89° 37' EAST, 150.00 FEET TO THE POINT OF BEGINNING;

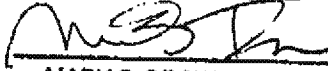
EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS AND MINERAL RIGHTS, NOT INCLUDING WATER, NATURAL GAS, NATURAL GAS RIGHTS,  
AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, THAT MAY BE WITHIN OR WITH UNDER THE LAND, TOGETHER WITH THE RIGHT TO ENTER THE SUBSURFACE OF SAID LAND AS RESERVED BY ANZA REALTY COMPANY, IN DEED RECORDED DECEMBER 17, 1957 IN BOOK 2194,  
PAGE 50 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

FURTHER EXCEPTING THEREFROM JURUPA AVENUE AS DESCRIBED IN DOCUMENT ENTITLED RESOLUTION NO. 16050, DEDICATED FOR PUBLIC STREET PURPOSES, CITY OWNED LAND, RECORDED MARCH 4, 1986 AS INSTRUMENT NO. 50177, OFFICIAL RECORDS, RIVERSIDE COUNTY, CALIFORNIA;

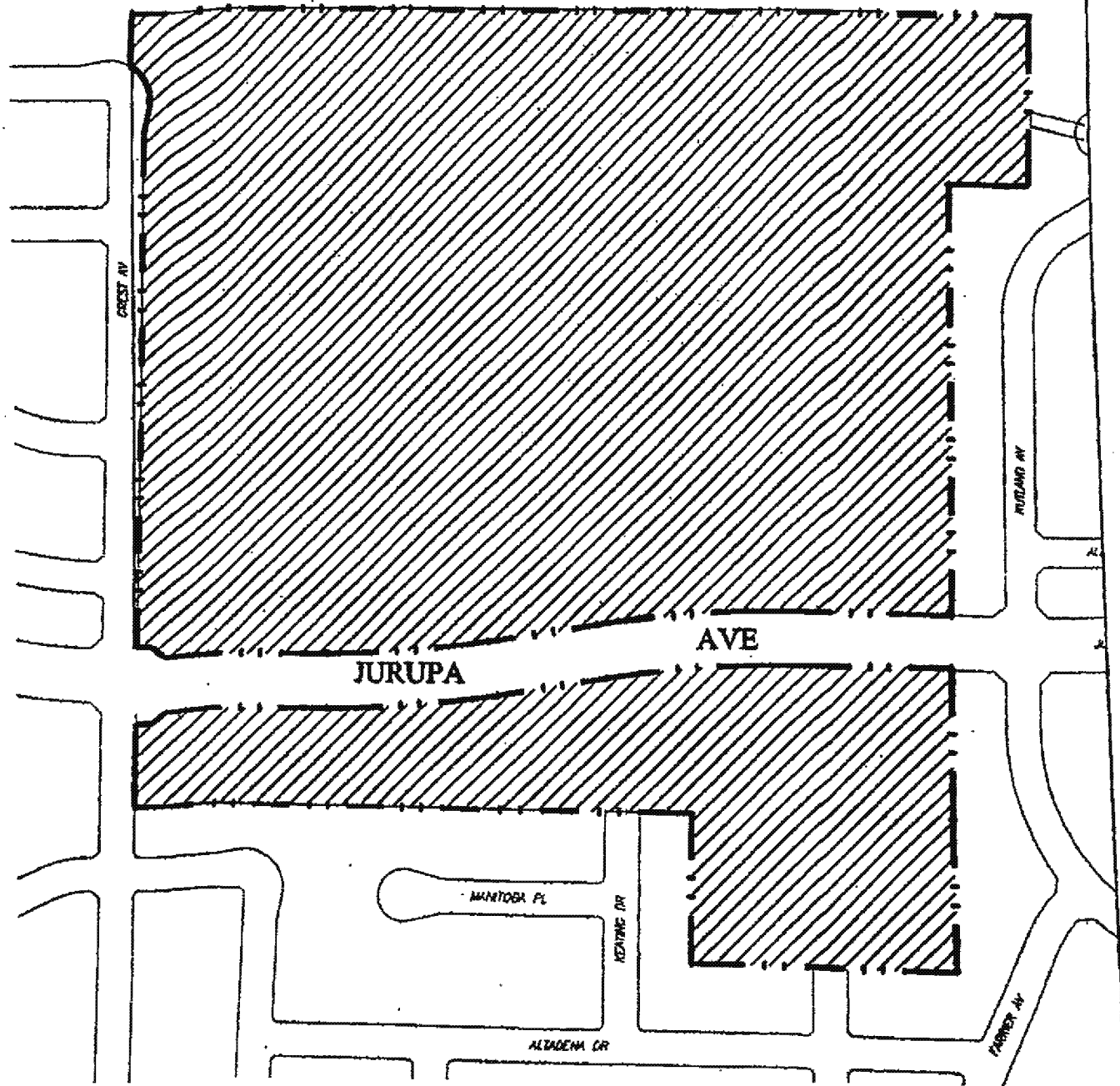
FURTHER EXCEPTING THEREFROM CREST AVENUE AS DESCRIBED IN DOCUMENT ENTITLED RESOLUTION NO. 12882, DEDICATION FOR PUBLIC STREET PURPOSES, CITY OWNED LAND, RECORDED AUGUST 23, 1976 AS INSTRUMENT NO. 124577 OF OFFICIAL RECORDS, RIVERSIDE COUNTY, CALIFORNIA;

FURTHER EXCEPTING THEREFROM CREST AVENUE AS DESCRIBED IN DOCUMENT ENTITLED RESOLUTION NO. 15139, DEDICATION FOR PUBLIC STREET PURPOSES, CITY OWNED LAND, RECORDED OCTOBER 13, 1983 AS INSTRUMENT NOS. 212726 AND 212728, BOTH OF OFFICIAL RECORDS, RIVERSIDE COUNTY, CALIFORNIA.

DESCRIPTION APPROVAL

 2/23/04  
MARK S. BROWN DATE  
CITY SURVEYOR





SCALE: 1" = 300'

**adkan**  
**ENGINEERS**  
 CIVIL ENGINEERING • SURVEYING • LAND PLANNING  
 8820 AIRPORT DRIVE, RIVERSIDE, CA 92504  
 TEL: (909) 838-0241 • FAX: (909) 838-0588

38-25

EXHIBIT B  
On-Site Escrow Agreement

21654282 1

-17-

**38-26**

EXHIBIT C  
Off-Site Escrow Agreement

21654262.1

-18-

**38-27**

**EXHIBIT D**  
**Release of Liability By Designated Developer**

The Designated Developer forever and completely releases and discharges the Rohr Released Parties [and the City] from all Claims, including, but not limited to, all Environmental Liabilities and Consequential Costs in any way related to (i) Hazardous Materials Released On-Site; (ii) Hazardous Materials migrating from the Site to the Off-Site; and (iii) the Designated Developer's rights, interest and entitlements at the Site (including, but not limited to, Claims for interference with contract and similar Claims), whether such Claims are known or unknown.

The Designated Developer understands the meaning and effect of California Civil Code Section 1542 which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Designated Developer assumes the risk of any and all unknown, unanticipated or misunderstood defenses, claims, causes of action, contracts, liabilities, indebtedness and obligations which are released by this Agreement and hereby waives and releases all rights and benefits which it might otherwise have under California Civil Code Section 1542.